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Description of Mathematical Model for the Allocation of the Contingency Fee Funds

Distributor Settlement Agreement and Janssen Settlement Agreement

This document describes the Mathematical Model for allocation of the Contingency Fee Fund described in Exhibit R (Agreement of Attorney's Fees, Expenses and Costs) to the Distributor Settlement Agreement and the Janssen Settlement Agreement, respectively.[1] Awards of fees from the Contingency Fee Funds shall be available to Attorneys with Qualifying Representations of Participating Litigating Subdivisions eligible to receive an allocation under the corresponding agreements.[2] A Fee Panel shall oversee the application of the Model and resolve any questions or disputes concerning the eligibility of a counsel to participate. The Panel is empowered to hear disputes concerning and ensure the accuracy of the mathematical calculations.

In general terms, allocation of the Contingency Fee Fund shall be made by (1) determining the amount of the Settlement Fund that is attributable to each Litigating Subdivision; (2) making certain adjustments to these amounts based on when the Subdivision filed suit and the terms of the applicable fee contract; and (3) dividing the Contingency Fee Fund proportionately among counsel for each Participating Litigating Subdivision based on the amounts calculated in subpart 2.

Each Settling Defendant is responsible only for its own share of payments.[3] In other words, to collect a fee award from the Contingency Fee Fund against a Settling Defendant, the Participating Litigating Subdivision must have named the Settling Defendant in its lawsuit. The total amount of the Contingency Fee Fund in the Distributor Settlement Agreement is $516,923,077.[4] Amerisource's share is $160,246,153.97 (31.0%), Cardinal's share is $159,729,230.89 (30.9%), and McKesson's share is $196,947,692.46 (38.1%). The total amount of the Contingency Fee Fund in the Janssen Settlement Agreement is $123,076,923.[5]

More specifically, allocation of each Settling Defendant's share of the corresponding Contingency Fee Fund shall be made according to the following steps. These steps must be performed separately for each Settlement Agreement, and each Defendant is responsible for paying only its share of the Contingency Fee Fund. These calculations are made only for purpose of determining the percentage share of the Contingency Fee Fund that Attorneys for each Participating Litigating Subdivision should receive, ***not*** for determining the dollar amount each Subdivision will receive.

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[1] *See* Distributor Settlement Agreement, Exhibit R § II.B.3; Janssen Settlement Agreement, Exhibit R § II.B.3.

[2] Distributor Settlement Agreement, Exhibit R § II.B.3; Janssen Settlement Agreement, Exhibit R § II.B.3

[3] Distributor Settlement Agreement, Exhibit R § II.A.5.

[4] Distributor Settlement Agreement, Exhibit R § II.D.1.

[5] Janssen Settlement Agreement, Exhibit R § II.D.1.

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(1) For each Settling State, attribute 50% of the settlement funds for that State to its Subdivisions according to the Subdivision Allocation Percentage in Exhibit G to the Distributor Settlement Agreement or Janssen Settlement Agreement, as appropriate.

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Illustrative example for the Distributor Agreement:
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  - Assume that State A is allocated 1.00000% of the $18,554,013,691.11 Restitution/Abatement amount [see Exhibit M of the Agreement].

  - 50% of the 1% share allocated to State A is $92,770,068.46.

  - Assume that, per Exhibit G of the Agreement, the Subdivision Allocation Percentage for City B in State A is 1.00000000%.

  - For purposes of determining its counsel's share of the Contingency Fee Fund, City B is attributed 1.00000000% of $92,770,068.46, or $927,700.68.

(2) Adjust the amounts in paragraph 1 as follows:

    a. *Upward Adjustment for Early Filers.* Increase the amount calculated in paragraph 1 above by 10% for any Litigating Subdivision that named the defendant(s) in a suit before December 5, 2017, the date the National Prescription Opiate Litigation MDL was formed. This adjustment must be done individually for each defendant. If the Litigating Subdivision did not name a Settling Defendant in a suit before January 1, 2021, then fees from the Contingency Fee Fund for that defendant will not be awarded to Attorneys with otherwise Qualifying Representations of that Participating Litigating Subdivision.

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Illustrative Example:
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  - Assume City C is attributed $1,000,000 under paragraph 1 above.

  - If City C named the defendant(s) before 12/5/2017, the attributed amount would be adjusted to $1,100,000.

    b. *Determine Amount Due under Contingency Fee Contract.* Determine the amount that would be due to Attorneys with Qualifying Representations of each Participating Litigating Subdivision under the terms of the applicable fee contract if the Participating Litigating Subdivision were to receive the amount calculated in paragraph 2.a. This amount can be referred to as the Contingency Fee Assumption.

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Illustrative Example:
Continuing the example given in paragraph 2.a, if Attorneys have a
20% contingency fee contract with City C for the relevant
litigation, the amount calculated in this step would be 20% of
$1,100,000, or $220,000.
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In the next step, the Contingency Fee Assumption is used to determine the percentage share of the Contingency Fee Fund due to Attorneys for each Participating Litigating Subdivision.

(3) Divide the Contingency Fee Fund proportionately among Attorneys for each Participating Litigating Subdivision in two ways:

a. *National Fee Pool Calculation.*   Determine each Litigating Subdivision's percentage share of all amounts due under contingency fee contracts nationwide by dividing the Contingency Fee Assumption calculated for each Subdivision in paragraph 2.b by the sum of all Contingency Fee Assumptions. Then multiply that percentage by the Contingency Fee Fund to figure each Subdivision's dollar share of the Contingency Fee Fund (but only for Settling Defendants the Subdivision timely named in a lawsuit).[6]

Illustrative example for Distributor Settlement Agreement:
- $220,000 [from para. 2.b] ÷ $1,800,000,000 [total amount owed under contingency fee contracts nationwide] = 0.012222%[7]
- 0.012222% * $516,923,077.32 [Contingency Fee Fund] = $63,179.49

b. *Separate State Fee Pools Calculation.*   Determine each Litigating Subdivision's percentage share of all amounts due under contingency fee contracts statewide by dividing the Contingency Fee Assumption calculated for each Subdivision in paragraph 2.b by the sum of all Contingency Fee Assumptions in the same State. Then multiply that percentage by the portion of the Contingency Fee Fund that corresponds to that State's Overall Allocation Percentage, shown in Exhibit F of the relevant Settlement Agreement, to figure each Subdivision's dollar share of the Contingency Fee Fund (but only for Settling Defendants the Subdivision timely named in a lawsuit).

Illustrative example for Distributor Settlement Agreement:
- 1% * $516,923,077.32 = $5,169,230.77 [amount of the Contingency Fee Fund corresponding to State A]
- Assume a total of $17,600,000 is owed under contingency fee contracts for State A.

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[6] Because a few Litigating Subdivisions named only one or two of the Distributors in a lawsuit before January 1, 2021, each Subdivision's share of the Contingency Fee Fund is slightly different for each distributor. Therefore, under the Distributor Settlement Agreement, the calculations described in this step need to be made separately for each Settling Defendant. It is shown in a single calculation here for ease of illustration only.

[7] In this example, $1.8 billion is the amount theoretically owed under all contingency fee contracts for litigation against distributors as calculated in paragraph 2.b. This amount is illustrative only; the actual amount will not be known until all litigating subdivisions are identified and the terms of all of their contingency fee contracts are collected.

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- $220,000 [from para. 2.b] ÷ $17,600,000 = 1.25%
- 1.25% * $5,169,230.77 = $64,615.38

The award of fees to Attorneys with Qualifying Representations of Participating Litigating Subdivisions will be the average of the final amounts calculated in paragraphs 3.a and 3.b above.[8]

Paragraph 3.a represents allocation based on a proportional share of a National Fee Pool, while paragraph 3.b represents allocation based on a proportional share of the Separate State Fee Pools. In other words, for the National Fee Pool described above in paragraph 3.a, the contingency fee contract rate is compared to all other contingency fee contract rates in the nation. For the Separate State Fee Pools described above in paragraph 3.b, the contingency fee contract terms are compared to the other contingency fee contract terms in that same State. The National Fee Pool and the Separate State Fee Pools are given equal weighting. This is illustrated below.
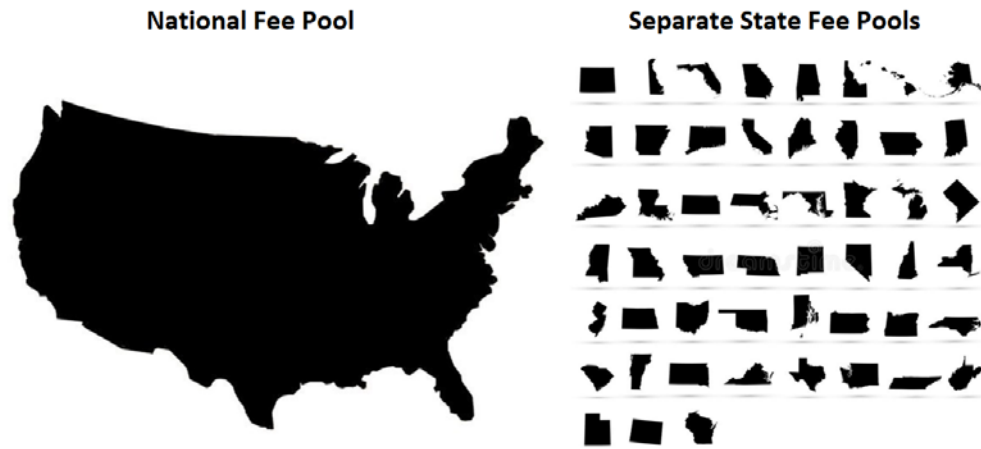
Using the first methodology, Attorneys for two Subdivisions in different States with the same amount calculated under paragraph 2.b would be assigned the same amount under paragraph 3.a. Using the second methodology, Attorneys for the same two Subdivisions would be assigned different amounts under paragraph 3.b because they are in different States. Specifically, the Subdivision in the State with a smaller proportion of Participating Litigating Subdivisions would be allocated more than the Subdivision in the State with a greater proportion of Participating Litigating Subdivisions.

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[8] The model also enforces a maximum fee award of 20% of the amount calculated in 2.b. This rule is designed to prevent windfalls by addressing over-allocation in a small number of states with relatively few Litigating Subdivisions. An estimated 97% of Qualifying Representations are not impacted this rule. The description in this document of the Mathematical Model is by necessity an abstraction; the precise contours of the calculations are defined in the model itself.

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